

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FM HOLDINGS, LLC f/k/a  
FORWARDMARKET, LLC,

Plaintiff,

V.

BILL MAHONEY and  
STEPHEN GREGORIO,

Defendants.

Civ. No. 05-11400-MLW

# JOINT STATUS REPORT

The parties respectfully submit this joint status report pursuant to the Court's February 12, 2007 Order. On February 6, 2007, the parties jointly moved to stay all proceedings in this action pending the resolution of newly arisen insurance coverage issues.<sup>1</sup> In its February 12 Order, this Court allowed the motion to stay and ordered the parties to report to the Court by June 9, 2007. It further set a status conference for June 19, 2007.

Counsel for Defendants have been involved in discussions with counsel for Excelergy NA, LLC (“ENA”), against whom Defendants have asserted a demand for indemnification pursuant to the by-laws of Excelergy Corporation, ENA’s predecessor company and Defendants’ former employer. To date, ENA has refused to comply with Defendants’ demand for indemnification, and Defendants therefore will commence litigation against ENA for indemnification, including the costs of defending the present action. In addition, Defendants

<sup>1</sup> Specifically, the parties informed the Court that after providing coverage for over two years, AIG Domestic Claims, Inc. had abruptly denied coverage for Defendants under the Defendants' former employer's insurance policy.

dispute the position of AIG Domestic Claims, Inc. (“AIGDC”) concerning its denial of coverage for this matter. Due to a conflict of interest, present counsel for Defendants cannot represent Defendants in that dispute, but Defendants have retained separate counsel to handle the matter and intend to assert claims against AIGDC as well.

Counsel for the parties have agreed that once Defendants have asserted claims against ENA and AIGDC, counsel will attempt to bring all parties together in an alternative dispute resolution setting to try to resolve the matter. The parties will use their best efforts to conduct and conclude such alternative dispute resolution by September 14, 2007. Present counsel thus respectfully request that the Court continue the present stay of proceedings until September 14, 2007, at which time the parties will report further to the Court.

The parties have a difference of opinion as to a further revised schedule. Plaintiff requests that, in the event alternative dispute resolution does not result in a comprehensive settlement by September 14, 2007, the parties resume the case based on the schedule in effect prior to the stay, with Defendants’ expert report to be due by September 28, 2007, all discovery to be completed by October 31, 2007 and trial to commence on a date to be established by the Court. Plaintiff also requests that the status conference scheduled for June 19, 2007 proceed as scheduled.

Defendants believe that submitting proposed revised schedules at this junction is premature. They respectfully request that the Court continue the status conference scheduled for June 19, 2007 to September 14, 2007 (or as soon thereafter as the Court’s schedule permits) and, in the event the parties are not able to resolve the matter through alternative dispute resolution, the parties would report back to the Court at that time to discuss further proceedings. In any event, Defendants believe that resuming the schedule in place prior to the February stay would

be inappropriate given the time that would be required to reinitiate undertakings that were abruptly halted by the stay, such as the preparation of expert reports, and to reschedule other discovery matters that will have been interrupted for many months. Thus, to the extent the Court is inclined to recommence proceedings if the case is not resolved through alternative dispute resolution, Defendants would request a more extended schedule than the one proposed by Plaintiff.

Dated: June 8, 2007

Plaintiff FM Holdings, LLC  
By its attorneys,

Defendants Bill Mahoney and  
Stephen Gregorio  
By their attorneys,

/s/ Sanford F. Remz

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